

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 95 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

POPATLAL G GUNDARANIYA

Appearance:

MR MA BUKHARI, AGP for Appellant
MR NS DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 22/09/2000

ORAL JUDGEMENT

1. Present respondent - Popatlal Gokaldas Gundaraniya filed a Regular Civil Suit No. 169 of 1979 in the Court of learned Civil Judge (SD), Amreli, against the present appellant - State of Gujarat, stating that he

purchased a plot of land in Manekpara area of Amreli from his predecessor-in-title on 14.12.1961 by a registered sale deed. Thereafter, proceedings under Section 66 of the Bombay Land Revenue Code were initiated against the

plaintiff on the allegation that the plaintiff had converted the use of the land from agricultural to non-agricultural purpose without the previous permission of the Collector and in that proceeding vide an order dated 12.10.1973, the Collector ordered the plaintiff to pay the fine of Rs. 288/- and non-agricultural assessment of Rs. 85.50ps and amount of Rs. 1,627.50ps by way of composition fees, and this action of the Collector was challenged by the plaintiff in the above said Civil Suit stating that the Collector was not entitled to levy N.A. fees, composition fees and fine as well. A declaration was sought that the action of the Collector was ultra vires and without jurisdiction on various grounds. The suit came to be challenged by the State on the ground that the Collector had power to levy NA fees, composition fees and penalty as well. It was also contended that the plaintiff gave an undertaking to the Collector to pay the composition fees for regularisation, and now he is estopped legally from taking a stand that the levy of composition fees by the Collector was illegal. It was also contended that the suit was barred by limitation and that under Section 11 of the Bombay Land Revenue Code, Civil Court has no jurisdiction to try the suit.

3. Learned Civil Judge (SD) Amreli after recording of the evidence and hearing of the parties, partly allowed the suit of the plaintiff to the extent that the action of the Collector to levy composition fees from the plaintiff was held ultra vires and without jurisdiction.

It was held that the Collector was empowered to levy NA fees and penalty. Against which, the State filed the Regular Civil Appeal No. 34 of 1982 in the Court of District Judge at Amreli, and learned Assistant Judge, Amreli, after hearing both the parties, was pleased to dismiss the Appeal, vide his order dated 28th June, 1983 and hence this Second Appeal by the State, original defendant.

4. Learned AGP Mr. M.A. Bukhari for the appellant and learned Advocate Mr. N.S. Desai, for the respondents were heard at length.

5. The substantial question of law arises for consideration is, whether the Collector had authority to levy composition fees and that whether the suit was barred by law of limitation and whether the Civil Court had no jurisdiction to try the suit under Section 11 of the Bombay Land Revenue Code?

6. So far as the levy of Non-agricultural Assessment and penalty is concerned, the suit of the plaintiff was dismissed and the plaintiff has not filed any Appeal against this decree of the trial court. Now, learned APP Mr. M.A. Bukhari challenged the judgments and decree of both the courts below on the ground that the Collector had power to levy composition fees because of the decision of the Government in shape of GR which are the executive instructions and in pursuance of this, the composition fees was levied by the Collector. Secondly,

it was urged that the plaintiff since he had given an undertaking to pay composition fee, he was estopped from taking a stand that the Collector had no authority to levy composition fees.

7. The contention that Collector had an authority to levy composition fee and that plaintiff was estopped from challenging the action of the State is covered by two decisions of the Supreme Court. In case of STATE OF ASSAM vs. BASANTA KUMAR, reported in AIR 1973 SC 1252, wherein the Supreme Court held that the executive directions cannot take place of substantial law and hence when there is no provision empowering the Authorities to levy such fine. The authority concerned cannot impose such fine or levy merely on the executive directions. Therefore, so far as this case is concerned, the State failed to show any provision or statute by which the Collector is empowered to levy composition fees and when there is no such provision, levy of composition by Collector would be without any authority and ultra vires. It is made clear by the Supreme Court that the executive directions cannot take place of substantial law, therefore, unless and until the substantial law permits or authorises the Collector to levy composition fees, the levying of composition fees by the Collector, would be an act without an authority and not in pursuance of law. Mere administrative direction by the Government would not authorise a Collector to levy composition fees. In this view of the matter, both the courts below had rightly

held that the Collector had no authority to levy composition fees and the suit on that count was rightly decreed by the trial court and appeal was dismissed by the First Appellate Court.

8. So far as the question of estoppel is concerned, the issue is covered by a decision of the Supreme Court in the matter of SHRI KRISHNA vs. KURUSHETRA UNIVERSITY, reported in AIR 1976 SC 376, wherein it has been observed that when an undertaking is given or taken by any person in ignorance of his legal rights, then, the same will not be binding to him. Therefore, in this case also, when the plaintiff executed an undertaking, the same was in ignorance of his rights that the levy of composition fees was against the law and the undertaking given therefore by the plaintiff would not be binding on him. Such an undertaking, which is not supported by the law as well as executed in the ignorance of the rights of the party would not be binding on such party. Therefore, the contention that the plaintiff is estopped, has no merit.

9. So far as the question of jurisdiction of the Civil Court is concerned, it is clear that the suit is not filed for the action taken by the revenue authority in pursuance of the Bombay Land Revenue Code, but the Suit is filed to challenge the action of the Collector imposing the composition fees, which was without authority and, therefore, it could not be said that the

Civil Court had no jurisdiction to try the suit and the same was barred by Section 11 of the Bombay Land Revenue Code. The suit was filed to challenge a void ab initio order and therefore it would not be covered by Article 100 of the Limitation Act. The order of Collector which is challenged is non-est in the nature. Any such non est order can be challenged by the party in a civil suit when such non est orders are being executed by the concerned authority and, therefore, the contention that the suit was required to be brought within one year from the passing of the order, has no substance at all.

10. In this view of the matter, both courts below rightly held that the Collector has no authority to levy composition fees and that the suit was without limitation and was not barred by Section 11 of the Bombay Land Revenue Code.

11. In the result, there is no substance in the

Appeal, the same is dismissed with no order as to costs.

(J.R. Vora, J.)

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